IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

RPFC.No. 467 of 2007()

MC.120/2003 of on the file of the FAMILY COURT, THRISSUR
.....

PETITIONER:

SUBASH, S/O. RAMANKUTTY,
MOUKKATHODIYIL, C/O. VELU EZHUTHACHAN,KUNDUKATTIL,
P.O. KILLIMANGALAM, THALAPPILLY TALUK.

BY ADV. SRI.C.HARIKUMAR
SRI.VIZZY GEORGE KOKKAT
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS:

RAMANKUTTY, AGED 67 YEARS,
S/O. KUNJUNNI EZHUTHACHAN, MOUKKATHODIYIL,
KILLIMANGALAM VILLAGE, DESOM, THALAPPILLY TALUK.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

R.P.F.C. NO. 467 of 2007

* * * * * * * * * * * * * * * * * * * *

Dated: 14-12-2007

ORDER

Revision petitioner who is the son of the respondent herein was the counter petitioner in M.C. 120 of 2003 on the file of the Family Court, Thrissur. The said M.C. was filed by the respondent herein who is the 71 year old father of the revision petitioner claiming maintenance under Sec. 125 Cr.P.C.. Eventhough the revision petitioner entered appearance and filed his objections, for the reason that he did not pay the interim maintenance as ordered, his defence was struck off and M.C. No. 120 of 2003 disposed of directing the revision petitioner to pay a monthly maintenance at the rate of Rs. 500/- per month from the date of the order that is 30-12-2006. It is the said order which is assailed in this Revision.

2. Eventhough the respondent was duly served, he has not chosen to enter appearance or oppose this revision.

3. In the light of the decision of this Court in ***Davis v. Thomas - 2007 (4) KLT 883*** the Family Court was not justified in striking off the defence of the revision petitioner for non-payment of interim maintenance . The Family Court was bound to give the

revision petitioner an opportunity to contest the maintenance application on merits. Accordingly, the impugned order dated 30-12-2006 is set aside and M.C. No. 120 of 2003 will stand restored to file with a direction to dispose of the same after giving the revision petitioner an opportunity to contest the same. The respondent shall be entitled to withdraw the interim amounts deposited by the revision petitioner pursuant to the orders of the Family Court as well as by this Court.

This Petition is disposed of as above.

V. RAMKUMAR,
(JUDGE)

ani.